Filed 6/23/09 In re Shaun V. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re SHAUN V., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. SHAUN V., Defendant and Appellant.	A122193 (Contra Costa County Super. Ct. No. J02-02237)

Appellant Shaun V., now 24 years old, appeals from an order of the juvenile court ordering him to pay restitution in the amount of $36,696 to the victims of a 2002 burglary in which he was implicated when he was 17 years old. He now contends that the court lacked jurisdiction to enter the order, as a result of which he should apparently be relieved of any obligation to repay the victims for their losses. We reject appellant's claim and conclude instead that the juvenile court properly entered the restitution order. We therefore affirm.

BACKGROUND

While the history of this case dates back to a Welfare and Institutions Code section 602 petition filed in 2002, the facts relevant to this appeal can be summarized with relative brevity.[1]

By an amended petition dated January 15, 2003, appellant was charged with first degree residential burglary (Pen. Code, §§ 459/460, subd. (a)) and six other offenses not pertinent here. Appellant pleaded no contest to the burglary charge, as well as two other charges, and the remaining charges were dismissed with a *Harvey*[2] waiver.

At a dispositional hearing on March 5, 2003, the juvenile court ordered appellant placed in a county institution for 270 days, followed by a conditional release period of 90 days. Appellant was also ordered to pay restitution of $44,759 to the victims of the burglary, Mark and Barbara Perry. At no time did appellant's counsel challenge the amount of restitution ordered, and no appeal was taken from the dispositional order.

On April 14, 2004, the juvenile court terminated appellant's wardship, concluding that he had successfully completed the terms of his parole.

On August 23, 2006, the Perrys, who had not received any compensation from appellant despite the passage of over three years since entry of the restitution order, moved to amend the order to include parental liability pursuant to Welfare and Institutions Code section 730.7, subdivision (a). They also requested that the court issue the amended order as an order for restitution and abstract of judgment, and sought an income deduction order on the theory that appellant was likely employed since he was by then an adult.

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[1] A more detailed recitation of facts can be found in our opinion filed April 23, 2008 in the prior appeal in this matter. (*In re Shaun V.* (April 23, 2008, A116215 [nonpub. opn.].)

[2] *People v. Harvey* (1979) 25 Cal.3d 754.

The court granted the request to include parental liability, ordering appellant's mother jointly and severally liable in the amount of $32,000.[3] The court also reduced the restitution order to an order for restitution and abstract of judgment.[4]

Appellant appealed from the order. In his opening brief, however, he did not raise any specific issues, instead requesting that we independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. After conducting our independent review, we sought briefing on particular issues relating to the validity of the 2003 restitution order.

After briefing was completed, by opinion dated April 23, 2008, we concluded that the 2003 restitution order was invalid for two reasons: (1) the record was devoid of any evidence that appellant had been advised of his right to have a judicial determination of the amount of restitution and a hearing on the issue; and (2) the amount of restitution ordered was not based upon a judicial determination but rather on a statement in the probation report that the victims were "requesting $44,759 in restitution." Because the order appealed from—the 2006 order—amended an invalid order, we determined that the 2006 order must be set aside. We then remanded the matter to the juvenile court with the following guidance: "We shall remand this case to the trial court to permit the People and/or the Perrys, or the trial court on its own motion, to move to correct the 2003 restitution order we invalidate. At that time, the trial court can address the question whether, in the circumstances, the superior court may now correct the original restitution order. This will require the trial court to make the factual determination, never heretofore made, of whether the amount of loss sustained by the Perrys could have been ascertained at the time of sentencing and, if so, to also determine whether a restitution order may nevertheless now be lawfully imposed under section 730.6 of the Welfare and Institutions Code."

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[3] This was apparently the maximum amount permitted by statute. (Civil Code, § 1714.1, subds. (a), (c).)

[4] For reasons not evident from the record, the court did not issue an income deduction order.

On remand, a hearing was held on June 2, 2008, at which the juvenile court concluded that the amount of restitution was "to be determined" and set a restitution hearing for June 4, 2008. At the June 4 hearing, attended by appellant who had just been released from county jail the previous day,[5] the court considered a victim claim/statement and description of loss apparently submitted by the Perrys to the probation department in December 2002. Based upon the claim form and supporting documentation, the court ordered restitution to the Perrys in the amount of $36,696.[6]

This timely appeal followed.

DISCUSSION

A. The Juvenile Court Had Jurisdiction to Order Restitution

Appellant raises one issue on appeal: whether the juvenile court could lawfully impose restitution after remand. He contends that the court lacked jurisdiction to do so, asserting as follows: "When this Court remanded the matter to the juvenile court, it ordered that the juvenile court had to make a factual determination as to whether it could have ascertained the amount of restitution at the time of sentencing and, *if so*, whether a restitution order could now lawfully be imposed. The juvenile court failed to consider the threshold question and the juvenile court erroneously determined that it had the power to lawfully impose a new restitution order. The order for restitution must be reversed."

Appellant's argument derives from Welfare and Institutions Code section 730.6, subdivision (h), which directs the court to order restitution at the time of sentencing. According to appellant, the only exception is when the amount of loss cannot be ascertained at the time of sentencing, in which case the court is to determine the amount of restitution at a later date during the term of the commitment or probation. He claims that in this case, the court could have determined the amount of restitution at the March 5, 2003 dispositional hearing because the Perrys' victim claim form was then in the

[5] The record is silent on the reason for appellant's incarceration.

[6] This order was directed only to appellant and did not include parental liability.

probation department's possession. It failed to do so, however, and, he submits, it cannot do so now because it lost jurisdiction over him in 2004 when the wardship terminated.

By this argument, appellant essentially seeks to take advantage of the fact that his wardship terminated before the restitution order underwent appellate review. This was so because he never appealed from the original restitution order.[7] Only because the victims, who had gone for over three years without receiving a single payment from appellant, successfully moved the court to amend the restitution order to include parental liability did appellant get a second bite at that order. Appellant appealed from the 2006 order amending the restitution order, but his counsel did not even identify specific challenges to the amended restitution order, let alone seek to invalidate the 2003 order. Fortuitously for appellant, we recognized potential deficiencies in the 2003 order and ultimately invalidated it. On remand and following a restitution hearing at which appellant appeared and was represented by counsel, the court reduced the amount of restitution by over $8,000.

Now appellant comes before us and argues that, despite the fact that he never disputed the amount of restitution ordered in 2003 and never appealed from the 2003 restitution order, and despite the fact that in the six years since the issuance of the original restitution order he has never made a single payment to satisfy the order, he should be completely relieved of his obligation to repay the Perrys for their loss because of some perceived jurisdictional defect, a supposed defect essentially created by his failure to appeal from the 2003 restitution order. To put it in the simplest terms possible, nonsense.

In rejecting the same jurisdictional argument at the June 2, 2008 hearing, the juvenile court explained:

[7] Arguably, even if appellant had timely appealed from the 2003 restitution order, his wardship might have terminated before we had completed review of his appeal. Certainly he does not contend that under those circumstances, the juvenile court would have lacked jurisdiction to correct the restitution order on remand.

"I'm going to treat this as to be determined, because the minor did not object. The time for appeal had passed. I don't think it's fair to put the victim in a spot where years later minor comes in and says, well, I don't want to pay this, and then the victim is left without any recourse whatsoever. That's not the intent of the legislature. The intent of the legislature was to make the victim whole, to reimburse them for expenses incurred as a result of the minor's misbehavior. And I think I am certainly not going to at this juncture say, *gee, I'm sorry* to the victim, *even though it was ordered, some people along the way made mistakes and therefore you can't get paid.* I'm simply not going to do that.

"I think the appeals court had—it was a little confusing to this court, but it never was confusing to the point that the court didn't feel the court had the power to do something about this. They wouldn't have sent it back this way if they didn't think the court had the power to do something. They're not going to send it back for the court to say, sorry, I can't do anything. They would have told me that. So given the fact that they sent it back I am going to review, I am opening this up for reviewing the itemized. It seems to me their concern was that this was just ordered without anybody looking at any justification, and if that's the point—and this was done out of another court; it wasn't before me—I am going to look at the justification for the restitution and look at the evidentiary issues that were presented to that trial court.

"I'm going to open it up for the restitution today. I'm going to consider it as a *to be determined.* I'm going to review it and determine what I believe the restitution should be. And I will listen to all of your arguments about that, but you're represented—he's represented today, and the district attorney is here, and then I'm going to make that determination and order what I think is a fair and reasonable amount. So I can't think of another reason that they would have sent it back to me if they did not think that I should do something about it. So I think I can cure whatever happened in 2003, March 2003."

The court was correct: we did not remand the matter just to have the juvenile court determine that it could not do anything, thereby allowing appellant to escape his obligations to make restitution to the victims of his crime. As the court correctly observed, the primary concern driving our prior opinion was the lack of opportunity for

appellant to contest the amount of restitution. On remand, the court remedied this deficiency by affording him a restitution hearing. This was in keeping with the intent of our prior opinion.

The California Constitution provides, "It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. [¶] Restitution shall be ordered from the convicted persons in every case regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary." (Cal. Const., art. I, § 28, subd. (b). See also Penal Code, § 1202.4, subd. (f) and Welf. & Inst. Code, § 730.6, subd. (h) [implementing this mandate for adults and juveniles, respectively].) Countless cases have emphasized the utmost importance of awarding restitution to the victims of crime. (See, e.g., *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046 ["In examining the restitution statute, '[t]he intent of the voters is plain: every victim who suffers a loss shall have the right to restitution from those convicted of the crime giving rise to that loss.' "].) Because restitution is constitutionally and statutorily mandated in California (*id.* at p. 1045), the failure to order restitution results in an unauthorized sentence subject to correction. (See *People v. Rowland* (1988) 206 Cal.App.3d 119, 127 [failure to impose restitution fine resulted in an "unauthorized sentence" subject to correction at any time].)

Given the unequivocal mandate that all crime victims shall be compensated for their losses, and the totality of the circumstances before us, we conclude that the juvenile court properly determined it had the authority to correct the 2003 restitution order.

B. The Juvenile Court's Order Requiring Appellant to Pay Restitution in the Amount of $36,696 is Supported by the Record

Appellant presents no challenge to the amount of restitution ordered, arguing only, as detailed above, that the court lacked jurisdiction to order restitution at all. Nevertheless, we examine the amount of restitution ordered after remand, and conclude it is supported by the record.

In our prior opinion, we explained that the standard of review applicable to restitution orders is unsettled: "In *People v. Vournazos* (1988) 198 Cal.App.3d 948, 958-959, the court applied the substantial evidence test in concluding that a hearsay probation report was insufficient evidence upon which to base a restitution award. Other courts have held that appellate review is guided by the abuse of discretion standard. (See, e.g., *People v. Ortiz* (1997) 53 Cal.App.4th 791, 800; *People v. Tucker* (1995) 37 Cal.App.4th 1, 6.)" (*In re Shaun V., supra,* p. 15.) We need not weigh in on this conflict here because the record easily supports the order under either standard.

At the June 4, 2008 restitution hearing, the court had before it the 24-page victim claim/statement and supporting documents that the Perrys evidently submitted to the probation department in December 2002, shortly after the burglary. The claim form listed the categories for which the Perrys sought restitution—such as items stolen, medical bills, lost wages, and repairs for damage caused during the burglary—and the amount of loss for each category. Supporting documents then detailed the particular items stolen and the value of each item: multiple pieces of jewelry, many of them precious family heirlooms; a silver dollar coin collection dating back to 1880, along with other miscellaneous coins in the Perrys' collection; cash and each location from which it had been taken; a knife of sentimental value; a baseball and baseball card collection; and electronic equipment. There was also an itemization of the damage done to the Perry house during the burglary and the corresponding cost of repairs.

At the restitution hearing, the court expressed concern over one item the Perrys sought to recover. As to their request for lost wages, it explained: "You don't get emotional distress days off. That is not counted in restitution. You can get if you had

to—if you lost wages because you were at the police department that would be acceptable. If you were in court that's acceptable. Other than that I don't know of any other way that restitution can be paid for lost wages." The court then allowed the Perrys to recover for wages lost on days they spent in court, but reduced the claim by $8,063 for noncompensible wages lost due to emotional distress. Subtracting $8,063 from the requested restitution of $44,759, the court arrived at an amount of $36,696. Appellant's counsel raised no challenge to the amount, instead adhering to his position that the court lacked jurisdiction to order restitution at that point in time.

Given the detailed support for the value of the lost items, the proper exclusion of wages for days of work lost due to emotional distress (Welf. & Inst. Code, § 730.6, subds. (h)(3)-(4)), and the lack of challenge by appellant to the specific amount requested, the court properly ordered restitution of $36,696.

DISPOSITION

The June 4, 2008 order ordering appellant to pay restitution to the Perrys in the amount of $36,696 is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Lambden, J.